IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. **354 of 2002**

Reserved on : 28.5.2007

Date of Decision : 30.7.2007

Daljit Singh …Petitioner.

Versus:

Union of India & others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the petitioner: Mr. Dushyant Dadhwal, Advocate.

For the respondents.: Mr. K. B. Khajuria, Central Govt. Counsel.

Sanjay Karol, J (Oral).

Petitioner joined the Indian Army as Sepoy in the year 1978. He was promoted to the rank of Lance Naik in 1983 and thereafter as Naik in the year 1985. In 1992, he was promoted as Hawaldar and continued to work as such. During the year 1998, when the petitioner was due for promotion as Naib Subedar, he was considered not fit to be promoted. He made a non-statutory representation which was turned down resulting into filing of statutory complaint, in accordance with the

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Rules, which was duly considered and rejected in terms of the impugned order dated 12th January, 2001 (Annexure PA). The reason for rejection assigned in the impugned order is that the assessment of average grading by Initiating Officer and the Reviewing Officer with regard to the confidential report pertaining to the year 1996 is in consonance with the petitioner's overall profile and no interference was warranted. He could not make it to the select panel for promotion to the rank of Naib Subedar due to his overall profile and its comparative evaluation of the Departmental Promotion Committee.

It is this action, which has been assailed by the petitioner before this Court. From the counter affidavit, it is clear that the petitioner did not fulfill the eligibility criteria as laid down by the respondents in terms of its circular dated 10th October, 1997 (Annexure R-1), relevant portion of which reads as under: -

> **"6. <u>For promotion to the rank of Nb Ris/Nb Sub.</u>**
>
> (a) Only last five reports will be considered, out of which minimum three reports must be in the rank of Hav and in case of shortfall rest may be in the rank of Nk.
>
> (b) At least three out of last five reports (should be above average) with a minimum of two in the rank of Dfr/Hav and remaining should be not less than 'High average'."

However, it is evident from the affidavit filed by the respondents that petitioner is having unblemished service

record. He has been successfully serving the defence forces to the satisfaction of the respondents. Perusal of para-7 of the return, would show that since 1983, petitioner's gradation and performance has been exceptionally good and his ACRs have been assessed to be either Above average or High average. Relevant portion of para-7 is reproduced as under:-

"7. The details of ACRs earned by No. 3977324K Hav Daljit Singh of 16 DOGRA during the last 19 years are as under:-

Year	***Initiating Officer (IO)***		***Reviewing Officer (RO)***	
	Grading	Name of Initiating Officer	Grading	Name of Reviewing Officer.

1983 Above Average Capt Jasbir Singh Above Average Lt Col HS Kanwar.
1984 High Average Maj VP Preenja High Average Lt Col HS Kanwar.
1985 Above Average Maj AS Wadhawan Above Average Lt Col HS Kanwar.
1986 High Average Maj AS Gahlaut High Average Col JS Pathania
1987 High Average Maj AS Gahlaut High Average Col JS Pathania
1988 Above Average Maj RP Chandpuria Above Average Col JS Pathania.
1989 High Average Maj JS Negi High Average Col PP Singh
1990 Average Maj AS Gahlaut High Average Col PP Singh
1991 High Average Maj AS Gahlaut High Average Col PP Singh
1992 High Average Maj AS Gahlaut High Average Col PP Singh
1993 Above Average Lt. Col RS Rawat Abvoe Average Col YS Tyagi.
1994 Above Average Lt. Col BS Patwal Above Average Cdr 9(1) Mtd Bde Gp.
1995 Above Average Lt. Col BS Patwal Above Average Cdr 9(1) Mtd Bde Gp.
1996 Average Maj M Manoharan Average Col AS Gahlaut
1998 Average Maj SS Dhadwal Average Col Vijay Kumar
1999 Average Maj SS Dhadwal Average Col Vijay Kumar
2000 High Average Lt Col Bhim Singh High Average Col K Randheer Singh.
2001 High Average Col BS Jamwal High Average Col Bijay Singh."

Thus, it is evident that the petitioner's service record has been exceptionally good.

Taking strength from the affidavit, the learned counsel for the petitioner argued that keeping in view the ratio of law as laid down by the Apex Court in ***U.P. Jal Nigam and Others*** v. ***Prabhat Chandra Jain and Others*** (1996 (2) SCC 363) down gradation of petitioner's entry reflects an adverse element which was compulsorily required to be communicated to the petitioner to enable him to make a representation in this regard.

From the record, it is clear that no explanation or reason at all has been assigned for recording the change in petitioner's performance. In fact, as is evident from the record, why the petitioner has been assessed as average for the year 1996, there is no reason or material at all. Particularly in the background that for the preceding three years, his performance has been assessed as 'Above Average' and for the years 1991-1992, his performance has been assessed as 'High Average'. From the record, it is also evident that the petitioner's performance for the years 2000-2001 has also been assessed as 'High Average'.

I am also informed at the Bar that admittedly petitioner has now been given the Honorary status of Naib Subedar immediately after his retirement in the year 2001. If he was considered and found fit and deserving to be given the

honorary status immediately after retirement, certainly, the authorities could have communicated the entries down grading his performance in view of the ratio of law laid down in the above mentioned case, giving an opportunity to take remedial measures. The communication dated 28th August, 2002 addressed to the petitioner conferring the honorary rank of Naib Subedar on retirement, is taken on record.

For all the aforesaid reasons, I am of the considered view that in view of the ratio of law laid down by the Apex Court, any down gradation of petitioner's performance ought to have been communicated to him by the authorities allowing him to make representation or take recourse to law, more so when the respondents themselves conferred the status of honorary rank of Naib Subedar. The present writ petition has to be allowed. The impugned order dated 12th January, 2001 is, therefore, set aside and the respondents are directed to take action in accordance with law within a period of four months from today. The writ petition is allowed.

(Sanjay Karol),
Judge.

July 30, 2007.
(*rana)*